

Halakhah LeMoshe MiSinai: A Historical Analysis

Introduction

The enigmatic expression, *Halakhah Le'Moshe Mi'Sinai* (HLM) is mentioned throughout the Talmud. However, it is a phrase that the Sages (*Hazal*) had great difficulty defining uniformly and with total agreement. We find that both *Tannaitic* and *Amoraic* discussions contain the term HLM. Early and late commentators argued about the implications of these discussions and some even mentioned the possibility of a Rabbi who thought that a *halakhah* originated as a HLM subsequently reversing his view.

To illustrate the problem of HLM, there is the very well known *aggadah* (story) in Tractate *Menahot* (29*b*) which describes Moshe asking God why he placed special markings above various letters in the Torah. God tells Moshe to go to the Yeshiva of Rabbi Akiva, a second century C.E. Tanna, and listen to him as he teaches his students. Moshe sits at the back of the academy and listens to the ensuing discussions between the Rabbi and his students. After listening to Rabbi Akiva answer many of the inquiries of the students, Moshe is completely confused and bewildered and begins to feel faint. When Rabbi Akiva gave his comments concerning the special markings on specific letters in the Torah scroll, a student asked him the source of his annotations. Rabbi Akiva immediately answered that the origin of his remarks are HLM—they are derived from Moshe who received them at Sinai from God. The Talmud concludes the story by noting that when Moshe heard this response, he recovered his equilibrium. Even though he did not comprehend Rabbi Akiva's

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remarks, he felt honored and reassured to be considered the source of this tradition of learning. This aggadah appears to offer a view of HLM, which implies that Moshe did not know the reasons for the specific text markings and that they were the source of legal dicta that were derived by later Sages after the revelation at Sinai. A different view of HLM emerges from a discussion in the *Talmud Yerushalmi* [*Peah* 2:4] which states that the Sages will not derive anything completely new or original and that all the laws necessary for all situations that will arise in the future have already been revealed to Moshe at Sinai.

These two views of HLM are both contradictory and puzzling. On the one hand, the phrase HLM is used to refer to concepts that were foreign to Moshe and represent new legal insights articulated by later Sages. In contrast, HLM is interpreted to imply that every future Rabbinic ruling was already incorporated into the comprehensive revelation to Moshe on Mount Sinai. This paper is an attempt to comprehend this term in a more cohesive manner and to show how the concept of HLM has been defined in two ways—in a restricted manner directly linked to divine revelation and as a more dynamic process that unfolds in history. Finally, it will try to link these two approaches of HLM to the issue of *Torah She’Baal Peh* (Oral Law), a closely related concept in Jewish theology.

II. Tannaitic and Amoraic Sources

The term HLM occurs in only three Mishnahic texts: *M. Peah* 2.6, *M. Yadayim* 4.3, and *M. Eduyyot* 8.7 and appears in *Tannaitic* Midrash only once, *Sifra Tsav* 11.6. This final source is also cited in *Menahot* 89a and *Niddah* 72b. The Mishnah in *Peah* Chapter 2 describes the need to give *peah* for each individual field that a farmer owns and delineates what physical characteristics define a separation in a lot of land that create two fields. At the end of the chapter, Mishnah 6 states that if a single field contains two types of crop, the farm must set aside *peah* twice, once for each type of crop. This particular law is listed as a HLM. Within the specific context, this suggests that HLM was not an intellectual trump card and did not represent Rabbinic intellectual sleight of hand to close off halakhic discussion. Instead, the category HLM represents cases in which the Rabbis understood that there were two alternative ways of viewing a legal question. Both options were legitimate and neither was value-laden and the final decision could have gone either way. In those circumstances, HLM meant there was a verifiable tradition that one option was chosen and accepted from time

immemorial, without apparent justification in the text or by logical inference. Viewed in this way, HLM is a means of establishing definitions or axioms to promote further legal development.

David Weiss Halivni states that the fact that the term HLM is mentioned only three times in the Mishnah reflects a Tannaitic trend away from reliance on an oral tradition and towards exegesis of the text. Underlying this tendency was the belief of the exegetes who maintained “that Scripture itself could yield all that had been viewed strictly as oral law.”¹ The Tannaim believed that Scriptures were complete and perfect containing all laws. If a law was not explicitly mentioned, it could be derived by Rabbinic interpretation of the written text. As time passed, even laws which had originally been derived orally were believed to have been contained within the written Torah and were derived exegetically. Halivni writes, “When they grounded their opinions, justified their conclusions, and enforced their decisions, the Tannaim made almost no use of the concept of HLM.¹ Shmuel Safrai² attributes the scarcity of HLM in Tannaitic literature to the genre. He states that the majority of laws have a weak connection to Scripture. For example, in the first sentence of the Shema (Deuteronomy 6:4), we translate “you should love God your God with all your heart” to mean prayer. However, neither the role nor efficacy of prayer can be derived directly from Scriptures.

Over the course of time, the exegesis that was relied on to demonstrate the presence of various halakhot in Scriptures came to seem far removed from the *peshat* or plain meaning of the text. As a result, the later *Amoraim* in the third and fourth century C.E. were more inclined to use HLM than the *Tannaim*. This difference between the *Tannaim* and *Amoraim* is demonstrated in the Palestinian Talmud (*Shevuot* 33a) where R. Yohanan, an *Amorah*, states that the *aravah* rite on *Succot* is a HLM, while Abba Saul, a *Tannah*, derives this ritual practice exegetically. Another example of this difference is R. Yohanan’s claim that the water libation rite of *Sukkot* is a HLM whereas R. Akiva, a *Tannah* deduces this rite exegetically using an extra scriptural letter. Halivni further states that “Palestinian traditions that extol the oral law are connected with the greater Amoraic reliance on HLM rather than on exegesis.” Christine Hayes agrees with Halivni that, in contrast to the *Amoraim*, the *Tannaim* make almost no use of the concept of HLM as part of the movement away from oral law and exegesis. This contrasts with the erosion of confidence in exegesis and greater use of HLM that occurred throughout the Amoraic period. Hayes comments that the difference between the Bavli and Yerushalmi Talmuds is reflected in

their utilization of HLM to give authority to various laws or practices whose authority seemed to be weakly determined by divine origin or authority. Nearly 80% of the laws identified in the Yerushalmi as HLM are laws identified as weakly connected to Scriptures, whereas only 40% using the term HLM in the Bavli are identified as loosely connected. The redactors of the Bavli reduced the use of the term HLM to identify a unique law. In both Talmuds, HLM is connected with divine authority but the specific nature of the connection differs markedly.³

III. The Approaches of the Rambam and Ramban

The Rambam was one of the first scholars to systematically analyze the notion of HLM after the completion of the Talmud. In his Introduction to the Mishnah, he states that there are five types of laws mentioned in the Torah:

- 1) Indisputable laws attributed to Moshe for which there is a hint in the Bible or which can be deduced from the written word;
- 2) Indisputable laws which originated as HLM for which there is no hint or means of derivation;
- 3) Laws derived using one of the hermeneutic principles, whose specific methodology of derivation was subject to dispute;
- 4) Laws that the prophets and Sages determined in each generation as a protective “fence” to existing law;
- 5) Edicts and customs dictated by the Sages.

For inclusion in the category of HLM, the Rambam established three criteria which he states explicitly in his commentary on Tractate *Eduyyot*: 1) there can be no disagreement among any of the Sages about any of these halakhot; 2) there was continuous awareness and familiarity with these laws and none of the laws categorized as HLM were ever forgotten during the course of divinely recorded human history; and 3) there is no *remez*, i.e., no textual or linguistic hint, in the entire Torah from which these laws could have been derived. The Rambam is strongly convinced of the validity of these criteria and he repeats them unchanged in *Hilkhot Mamrim* (Chapter 1, law 3) and the *Sefer Hamitzvot*.⁴ There is also evidence that Rambam considered “reasonableness” as a subsidiary criterion for including a law in the category of HLM.

The Rambam’s requirement for complete unanimity regarding a HLM has been the source of much strenuous debate. The *Havot Yair*⁵ disagreed

with this criterion and showed convincingly that there are disputes about all thirty-three items listed by the Rambam in the Introduction to his Commentary on the Mishnah, contradicting a fundamental criterion in his definition of HLM. For example, the first HLM mentioned by the Rambam concerns the requirement of the quantity of a half a “log” of oil be contributed for a Todah (thanksgiving) sacrifice. The Havot Yair notes Rambam himself had mentioned the dispute between Rabbi Elazar ben Azariah and Rabbi Akiva, in which the former said that that no amount of exegesis would cause him to change his opinion that the quantity of oil needed for this sacrifice is a HLM.

Another internal inconsistency emerges in the Rambam’s discussion of Sukkot. In his Commentary in the Introduction on the Mishnah, the Rambam states that the Torah contains non-specific phrases such as “the fruit of the beautiful tree” with the general term “fruit” being universally and unequivocally translated as an esrog, with no other “fruit” even being considered as an option. The expression “ayin tahat ayin”, an eye for an eye, is unanimously interpreted as monetary compensation rather than inflicting comparable physical damage to the eye of the perpetrator of the original injury. Both of these laws were derived from various hermeneutic principles and are considered to be “*kabbalah Mi’Moshe*”, i.e., received from Moshe. Nevertheless, the Rambam does not classify them as HLM because their applications were derived by Hazal.⁶

Another area of controversy concerns the actual application of the hermeneutical principles. The Rambam states that the hermeneutic principles were given to Moshe at Sinai. However, he further states that while he considers the thirteen hermeneutic principles themselves as HLM, he regards the laws derived from them as being of Rabbinic origin. The Ramban took sharp exception to this view stating that both the hermeneutic principles as well as what is derived from them should be considered as divinely inspired. The thirty-three laws the Rambam called HLM are very unique because they are not outlined in the Torah. This difference of opinion between the Ramban and the Rambam impacts on the following question: To which category—Written or Oral Torah—do the laws identified as HLM belong? The traditional view of the revelation unequivocally states that in addition to the Written Torah, an Oral Torah was given simultaneously by God through Moshe to the Jewish people at Sinai.⁷ The Oral Torah contained all of the relevant details necessary to explain any problems that would arise in the future and they were given at one time at Sinai close to a thousand years before the time of the Tannaim. The Ramban’s

view of laws that were derived by means of the hermeneutical principles as HLM aligns with this belief about the Oral Law. Thus, if the standard definition of Oral Law is adopted, then only the Rambam's category of HLM would be considered Oral Torah. However, an alternative perspective understands the Oral Law as a continuing process mediated by authoritative exegesis. According to this view, God is understood to have given authority to Moshe to ordain the rabbis of his generation who, in turn, had the authority to ordain future rabbis. They would be charged with deriving new halakhot or with modifying existing halakhot to meet the requirements of the Judaism of their time. The Rambam's position on the laws derived from the hermeneutical principles might be interpreted as consistent with this variant conception of the Oral Law.

IV. Rabbi Shlomo Raphael Leon Tempolo

In the early seventeenth century, Rabbi Shlomo Raphael Leon Tempolo wrote a small volume entitled HLM,⁸ in which he defines this phrase in great detail and with great expertise. He tries to reconcile some of the internal difficulties in the Rambam's view of HLM. The exact dates of Rabbi Tempolo's birth and death are not known with certainty nor is there much information about the details of his life. Sources indicate that Rabbi Tempolo was a student in Amsterdam under Rabbi Yitzchak Abohab. He was appointed head of the Jewish court or Chief Justice (Av Bet Din) in Amsterdam in 1627 and studied there together with Rabbi Menashe ben Israel and Rabbi Shaul Halevi Morteira. Rabbi Tempolo attained the title of Gaon and except for a short seven year period when he was the Av Bet Din in Brazil, he spent his entire life teaching Torah and serving on the Bet Din in Amsterdam. Those who are familiar with the writings of the Rambam will notice that a large majority of Rabbi Tempolo's works, most of which were published after his death, are devoted to explaining the works of Maimonides.

Using original examples and basic concepts, Rabbi Tempolo discusses the limits of earlier discussions of HLM and what he perceives to be the intended definition of HLM for both the Sages and the Rambam. Three of the thirty-three items listed by the Rambam as being HLM contain the laws of *shiuim*, (measurements or sizes), *hatzitzim* (separators) and *mehitzim* (walls). The source for this listing is contained in the first chapter of *Erwin* (4a). Rabbi Tempolo asks the following question: If the topic of measurements was provided to Moshe in detail including their specific applications,

why is there a dispute between Bait Shamai and Bait Hillel (*Betzah 3a*) concerning the burning (*biur*) of leavened products (*hametz*) and sour dough (*sior*) on Passover? Bait Shamai states that for sour dough the necessary volume for transgression is that of an olive whereas for *hametz* it is that of a lentil bean. Bait Hillel is of the opinion that the size necessary for both *hametz* and *sior* is that of an olive. Rabbi Tempolo states that for the category of measurements, HLM implies that they were communicated to Moshe in a general manner, “*derech klal*.” He concludes that only the general measurements of the *shiurim* were given as HLM, but the details and ramifications concerning their applications in specific circumstances were left for the Sages to work out. Rabbi Tempolo comments that in all of the editions of the Mishnah Torah available to him, in the section describing the measurements of the specific foods forbidden to eat (Chapter 2, law 11), the Rambam writes that all *shiurim* mentioned are HLM and contain both general as well as specific applications. Although this statement directly contradicts Rabbi Tempolo’s general thesis mentioned above, he maintains that this inconsistency was due to the fact that the “correctors (editors)” missed this glaring error in the first edition of the Mishnah Torah that they reviewed, and the mistake was maintained in all subsequent editions available to him for examination.

V. Modern Maimonidean Views: Rabbi Eliezer Rabinowitz and Rabbi Shlomo Adler

In his comments commemorating the eight-hundredth anniversary of the Rambam’s death, the twentieth century thinker Rabbi Rabinowitz⁹ attempts to reconcile the Talmudic claim (*Eruvin 4a, Sukkah 5b and Brachot 41a*) that *shiurim* are HLM and Ramban’s notion that *shiurim* are derived by a *hekkesh* (logical/textual comparison). According to Maimonides, the identification of *shiurim* as HLM is derived using a *hekkesh* from the Torah statement “*eretx hita* (wheat) and *siora* (oats) with the use of *shiurim* derived from the word “*siora*” [oats]? If *shiurim* are HLM, then by the Rambam’s definition they cannot be the product of hermeneutical derivation. In an attempt to reconcile this apparent contradiction, Rabbi Rabinowitz writes that the *hekkesh* is cited only for mnemonic purposes (*asmakhta*); it is not the source of the ruling. Rabbi Rabinowitz explains each of the thirty-three halakhot that the Rambam enumerates as HLM in a similar manner. In a parallel manner, Rabbi Rabinowitz concurs that there are disagreements among the Tannaim and Amoraim regarding their definitions of HLM yet he concludes that even these disputes do not make

the laws in question incompatible with Rambam's notion of HLM. This is because later generations forgot varying parts of these teachings and used the few words that they remembered as the basis for laws that were reasonable but articulated after the time of Moshe. Nevertheless, the Rambam, in his Guide, refers to them as HLM.

As an example, Rabinowitz uses the discussion at the end of *Eduyyot* concerning the activity of *Eliyahu* at the time of the *Mashiakh* (Messiah). Rabbi Yehoshuah states, "I have a *kabbalah* from Rabbi Yochanan ben Zakkai who heard from his Rabbi who in turn heard it from his Rabbi that *Eliyahu* would do so and so—at the time of *Mashiakh*"; Rabbi Yehudah differed from Rabbi Yehoshuah and said so and so; Rabbi Simon differed from both of those previously mentioned; and finally, the Sages differed from all three and said something else. . . ." Thus, we have four different opinions of HLM. It is obvious that each of the above Rabbis did not hear their varying description of the activity of *Eliyahu* at the time of Messiah from Moshe but they were all aware that the Torah does recount exegetically that Moshe told the Jewish people about the future activities of *Eliyahu* in advance of the advent of the Messiah. The Talmud in *Eduyyot* continues that *Eliyahu* "will not add or subtract from anything already in the Torah but will only remove evil deeds from Bnei Yisroel." There is no fundamental argument concerning the accuracy of this statement; however, as described by Rabbi Yohanan ben Zakkai, Rabbi Yehuda, and the Sages, there is disagreement concerning the "amount of evil deeds" that will be removed by *Eliyahu*. Rabinowitz continues that in the Introduction to his Commentary of the Mishnahh, the Rambam concludes that there is no hint in all of the written Torah to those laws he considers HLM. It is conceivable that the basis for some of these laws may have been forgotten with the passage of time. It may be that the Rambam's purpose in writing his Introduction was to clarify the term HLM as well as that of "Oral Torah" because for him every mitzvah that was given to Moshe was given with its explanations (*im perusheha*). As the centuries passed, changing times brought new derivations not obviously transmitted at Sinai. Nevertheless, all of these new derivations were linked to the written Torah by the Rabbis. The specific laws that are completely contained in the Oral law but that have no connection, support, or hint in the written or earlier oral law and about which there is no disagreement were classified as HLM by the Rambam. Interestingly, this represents the first description of an effect of history and human activity on what is called HLM.

According to Rabbi Shlomo Adler,¹⁰ another twentieth century commentator, subjects listed as HLM are considered to have originated with the

Sages. Like Rabbi Rabinowitz, Rabbi Adler comments that the Sages do not argue about the divine source of the transmission of these laws but only about their content or specific meaning. This is compatible with the Rambam's explanation that disputes arose for laws derived through the *hekkesh* principle. These laws were not "heard through tradition" and some were also forgotten. It is important to emphasize that the Rambam clearly states that whoever is of the opinion that these laws were obtained from Moshe and that arguments developed later, or that these laws were eventually forgotten or not heard properly from the transmitting Rabbis, adheres to thoughts that are "shameful and unworthy" because such an individual did not differentiate between tradition and derivation.

In Rabbi Adler's analysis of the Rambam, the medieval philosopher felt that every HLM contains a kernel of divine content which is overlaid with Rabbinic wisdom and detail. In accordance with this concept, the Rambam states that laws designated HLM originated at Sinai though the Jewish people did not hear their details or applications from Moshe. Since the Jewish people heard only the general issue from him, the statement that these laws are derived from the Sages is correct. Thus, for certain specific laws, the Sages state that "these laws though not mentioned in the Torah are *divrai Torah*", derived from the Torah, which is taken as transmitted by Moses at Sinai.

VI. Non-Maimonidean Perspectives on HLM

In *More N'vuchei ha-Zman*,¹¹ Rabbi Nahman Krochmal (1785-1840) wrote that the unresolved disputes which were canonized by their inclusion in the "Mishnah" weakens the claim that rabbinic literature reflects the "authentic" tradition and the rational extensions of Scripture. He asserted that the beginning of the formulation of halakhot coincides with the beginning of the Tannaitic period. This is at complete variance with the traditional belief according to which it is claimed that some halakhot were composed very early in the formation of the nation, virtually at the inception of Jewish history. Some of these early laws were already forgotten during the mourning period following the death of Moses. The early halakhot, listed as HLM, were very problematic for Krochmal. He knew that these laws were unique and must be taken seriously due to their Mosaic origin. However, he had to be consistent with his concept that these laws could not have been transmitted by Moshe at Sinai. He defines HLM as "any halakhah not included in the comments of the *Soferim*, which has no *midrash* attached to it, is ancient in its establishment with a chain of tradi-

tion going back to the *zugot* (pairs) or to an unknown time in antiquity and is universally accepted. Such a halakhah is Sinaitic in nature, or as if it were from Sinai, not subject to investigation, examination, dispute, judgment on the basis of majority opinion or a tradition from one's teacher as is the case with all other halakhot."¹²

This view of HLM as rooted in history was also articulated by Rabbi Zacharias Frankel in his book *Darkhei HaMishnah*. He considered HLM to be "old laws" that were so ancient in origin that they were regarded as ones that had been given directly to Moshe.¹³ Frankel called HLM, *halakhah y'shanah*, old laws, and said they should not be viewed as literally coming from Moshe at Sinai. Rather, their origins were lost and they were of such antiquity, it was as if they were given directly from Moshe to the Jewish people.¹⁴

Many of the modern commentators following Nahman Krochmal including Abraham Geiger,¹⁵ Bezalel Lauterbach,¹⁶ Hanoach Albech,¹⁷ and others were also less prepared to accept the traditional view of HLM. One might attribute this historical approach exclusively to non-Orthodox thinkers. But there were Orthodox Rabbis such as Isaac Halevy, author of *Dorot Harishonim*, who were willing to incorporate history into an account of the development of halakhah and who came to different conclusions than Krochmal and Frankel regarding HLM. The problem that these individuals had with HLM was similar to those encountered by previous rabbis: How is it possible that laws originally attributed to the Sages—*Miderabanan*—could be regarded as HLM?

VII. Implications of the Divergent Views of HLM

After this review of the different conceptions of HLM, a key question that needs to be addressed is the potential ramifications of the divergence in view between the Rambam and his followers and later thinkers such as Rav Nahman Krochmal and Zechariah Frankel. On one level, there may be practical legal ramifications that emerge from the two conceptions of HLM. For example, the following question could be asked concerning the laws categorized as HLM—what is the punishment resulting from the transgression of a HLM? Are they considered part of the Torah (*Mi'deoraitah*), as their name implies? If so, then when a doubt arises as to whether a HLM has been committed or omitted, it is necessary for the individual to adopt a stricter position and repeat the commandment and be liable for more severe punishment for violations of the law. Alternatively, do we say that HLM is part of the oral law received by Moshe on Sinai and transmitted orally to

the Jewish people and can thus be treated as a originating from the Sages (*Mi"derabanan*). In such a case, when an individual is in doubt about whether or not he performed the mitzvah in question, the halakhah states that it is unnecessary to repeat the performance. Were the HLM transmitted to Moses, using a third method, in addition to the oral and written Torahs? Rambam uses the term, Moshe "*kibel otam*"—received them from God on Sinai thus elevating HLM to the status of *mi'deoraitah*. Ramban ascribes this view to the Rambam in discussing their differences concerning the laws derived using the thirteen Hermeneutic principles.

However, there are also philosophical implications that arise from the competing conceptions of HLM that have been defined in this review. They may have a bearing on the question of whether Jews can ever have absolute confidence that the laws they observe are of Sinaitic origin. We propose that the two opinions reflect on the feasibility of human beings gaining access to the divine law with complete certainty and whether there is a part of the halakhah that represents a clear version of material provided by God.

The Rambam adhered to the view that ontologically and psychologically, there is an unbridgeable gap between human beings and God. Human beings and God exist on two planes and the former can never eliminate the space between them, even though man was created in the divine image. However, at the same time the Rambam felt that it was critical to reinforce the Jewish legal system, which is grounded in the spoken word of God, and to place it on a firm incontrovertible footing. If there is no concrete basis to assert that the law is God given, then the Rambam was concerned that this would inevitably lead to skepticism about the validity and applicability of the law. In particular it would lose the force needed to convert "ought" into "must" and degenerate into relativism. Therefore, when the Rambam "created" the category of HLM, he was maintaining that this group of laws, in which there is absolutely no fundamental disagreement within the Jewish community, was categorically given by God.

There is no doubt that the Rambam was fully aware that there was a great deal of argument about the exact details of the content and application of each item, whether it was standards of measurement or criteria for construction of a valid sukkah. The writings of the Havot Yair and others in this group do not undermine what the Rambam thought about the term HLM. Instead, they simply concretize some of the problems that are evident to any seasoned student of the Talmud regarding this discrete category of laws. However, what ultimately links all thinkers who align them-

selves with the Rambam is an agreement that there is an absolute need to define a group of laws that represent in a free standing unequivocal way an objective manifestation of God's historic intervention and revelation at Sinai. Expressing this in another way, all of these thinkers adopt a maximalist view of the revelation to some minimum degree. Thus, there are some laws that were given in all their particularity over time at Sinai. The barest minimum amount for a maximalist thinker like the Rambam is the thirty three items that he lists as HLM in his Introduction to the Mishnah. For others, such as the Hazon Ish, the category extends much farther to include every law ever adjudicated by an ordained rabbi.¹⁸

This proposal would be consistent with the Rambam's view on two related issues. It would be concordant with his assertion that any Jewish individual who thinks that even a single letter from the Torah was not given to Moses on Mount Sinai is a heretic. This would reflect the Rambam's insistence that a valid religious viewpoint must include some element of the legal code as definitively God given. Moreover, this would be in agreement with the Rambam's view that there is no such thing as natural law that can serve as the basis for divine law. Everything that man knows has to be revealed from God. As a disciple of Aristotle, Maimonides was the rationalist par excellence and he saw the ideal state for human beings as the pure intellect. He clearly validated the use of exegetical methods to expand the Torah code of law. However, even though the Rambam viewed human beings as rational creatures, he could not permit reason to be the centerpiece of his religious world view because this would lead to differences of opinion followed by skepticism concerning the validity of the law. Therefore, he created and defended the category HLM to underscore that the bedrock of the Jewish legal code is divine revelation, not human rationality.

In many ways, the laws included in the category of HLM are somewhat peripheral and do not reflect essential ethical issues. But again, this would reflect the Rambam's view that laws that are derived rationally have no inherent value of their own on which to build a theological-political system. They must be grounded in a divine system, one in which God is central and indispensable and for which the category of HLM provides complete validation. Even if HLM is a minute category in the codes and even if it is off the beaten halakhic track, it grounds the Rambam's system in a way that firms up all of the other parts of his thinking—divine creation, reward and punishment, the nature of the ideal life.

All the other later thinkers perceive the course of Jewish legal law as containing an inherent and insurmountable gap in time. This temporal fis-

sure is operationally more important than the distance between God and man. According to this way of thinking, there is no certainty that any specific law was received in the form that we can affirm with absolute certainty as directly derived from God. The implication is that not only is there a psychological gap between man and God but there is a legal space that cannot be crossed. From this perspective, thinkers in this group, including Rav Nahman Krochmal, are certain there was a revelation. They accept that the Torah was given at Sinai in a public event experienced by the entire nation. However, after that event there was an inevitable break and subsequently human activity is the only source that we have for learning and transmission of law. From the perspective of these thinkers, the category of HLM represents laws that go back in history as far as possible and can be dated as close as possible to that Sinaitic revelation. But, one cannot state with certainty that they are actually in the form given at Sinai. Instead, the items labeled HLM are “as if given at Sinai.” The difference between the Rambam and Rav Nahman Krochmal with regard to HLM reflects their divergent sense of history. As Kenneth Seeskin has pointed out,¹⁹ the Rambam viewed history against a backdrop of a stable human nature and an unchanging theological truth. For him, HLM is evidence of this eternal truth. For Rav Nahman Krochmal and more modern thinkers, historical change produces conceptual change, consistent with their evolutionary theory of HLM.

Thus, we reach a fundamental and unexpected paradox. The Rambam, who creates a psychological barrier between God and man, asserts that human beings have in their possession incontrovertible evidence of their encounter with God at Sinai, namely the 33 items he calls HLM. Without recognition of the supernatural reality of these laws there is no legal system. But man can recognize their divinity. In contrast, the later thinkers are less concerned with confronting the psychological space between God and man. Instead, they see an historical gap in time that cannot be crossed, in which the revelatory experience and everything related to it occurred in an unreachable moment in the distant past. While these thinkers assert that we cannot verify with certainty that anything is God given, they endow human beings with tremendous power to act on the knowledge of the revelation to create and modify the law in the spirit of the events at Sinai. It is probable that the onset of modernity with its emphasis on rational thought and human autonomy greatly impacted on the intellectual approach to HLM and accounts for the movement from the Rambam to Rav Nahman Krochmal and Zechariah Frankel.

IX. Conclusion

We started this review with two aggadic texts that presented opposing views of HLM and have used them as a springboard to develop two approaches to what this enigmatic term has meant within the halakhic literature. This survey of HLM is dominated by the views of the Rambam and those who follow in his intellectual footsteps. This probably reflects the fact that the Rambam was the first rabbinic figure to write systematically about this topic. Both views of HLM maintain the importance of tradition and have a way of linking these specific halakhot to the revelation at Sinai. The Rambam's view is more orthodox in that it presents future change as preordained in the Torah. Krochmal's concept is more modern and evokes a larger historical sense of halakhah growing and evolving with the passage of time. Finally, based on our presentation, we suggest that the Rambam and those who support his analysis, would place HLM within the Written Law and consider these laws as incontrovertible evidence of divine authorship of the Torah. One could argue, based on the Rambam's comments in the Introduction to his commentary on the Mishnah, that in fact he considers HLM as part of the Oral Law. However, we suggest that while this may be technically true, the Rambam invests HLM with the authority of the actual Written Law. In contrast, Krochmal and his followers would consider HLM as part of the Oral Law and evidence of the historical evolution of the law in the hands of the Rabbis.

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